



089244
205-18
RESTRICTED - Not to be released outside the General Accounting Office without the specific approval of the Office of Management Operations.

RELEASED

72-0120

21

Review Of Certain Matters Concerning The Newtowne Nineteen Project In Annapolis, Maryland

B-167637

Department of Housing and Urban
Development

**BY THE COMPTROLLER GENERAL
OF THE UNITED STATES**

904209
089244

DEC. 21, 1971



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-167637

Dear Mr. Mitchell: *GHS 00001*

In accordance with your request of July 6, 1971, and subsequent discussions with your office, we have examined into certain matters concerning the Newtowne Nineteen rental-housing project, located in Annapolis, Maryland, which received Federal financial assistance. The project contains two sections: section I, consisting of ninety-three 2-1/2-story town houses and section II, consisting of 66 apartment units.

Our examination was directed toward determining (1) who owned the project, (2) the relationship and agreement between Newtowne Nineteen, Inc., the project mortgagor, and the Boise Cascade Urban Development Corporation, an investor in the project, (3) the monies spent by Boise and Newtowne to improve the project, and (4) the officials of the Department of Housing and Urban Development (HUD) responsible for approving construction plans and construction work and for granting permission to occupy the project.

Our review was made principally at HUD's Baltimore Area Office and included an examination of HUD records and of the accounting records and financial statements of the project maintained by a certified public accountant. We interviewed officials of HUD and Boise and a spokesman for each of the two project mortgagees--the Life Insurance Company of Virginia and the Federal National Mortgage Association. In addition, we interviewed Messrs. Boris S. Lang and A. John Briscuso, stockholders of Newtowne.

BACKGROUND

Newtowne was incorporated under the laws of the State of Maryland in 1964 to provide housing for low- and moderate-income families. The corporation stock was acquired by Messrs. Lang and Briscuso in 1967, at which time the housing project was in the planning stage. HUD approved Newtowne's applications for mortgage-loan insurance under the below-market-interest-rate program authorized by section 221(d)(3)

*Newtowne
HUD approved housing
Federal aid for
planning
urban development
program*

B-167637

of the National Housing Act, as amended (12 U.S.C. 1715¹) in August 1967 for section I and in June 1968 for section II. Sections I and II subsequently were converted to the newer section 236 program (12 U.S.C. 1715 z-1) in January and May 1970, respectively.

Under the section 236 program, HUD provides financial assistance by making monthly payments to the mortgagee to reduce to 1 percent the rate of interest paid by the mortgagor on the mortgage loan. The payments by HUD make possible lower rents to the occupants of the project.

Construction of section I was completed in November 1968, and construction of section II was completed in November 1969. HUD insured the mortgage loans for sections I and II in the amounts of \$983,600 and \$967,300, respectively. The firm of Annapolis Brokerage Associates, Inc., managed the project until October 1970 when Boise, in an effort to protect a \$125,000 investment it had made in the project in January 1970, assumed responsibility for management of the project.

The results of our examination are summarized below.

OWNERSHIP OF THE PROJECT

The legal owner of the project was Newtowne, the project mortgagor, until September 30, 1971, at which time title to the project was conveyed to HUD as a result of Newtowne's default on the mortgage loans. Although Newtowne was the legal owner of the project, a controversy existed as to who had controlling interest in Newtowne. In our opinion, this controversy would have to be resolved by a court of law.

RELATIONSHIP BETWEEN NEWTOWNE AND BOISE

The relationship between Newtowne and Boise was a matter of controversy between Boise and Messrs. Lang and Briscuso. Boise and Messrs. Lang and Briscuso claimed that they did not own stock in Newtowne.

In January 1970 Newtowne and Boise entered into two separate agreements, one for each section, which provided that Newtowne and Boise form a limited partnership (each party was to have a 50-percent interest in the project) immediately following HUD's final approval of the completed project for mortgage-loan insurance. The agreements were entered into for the purposes of acquiring ownership of the project and eventually selling each of the project units as a condominium with mortgage loans to be insured by HUD. As part of the agreement, Boise was to pay Newtowne \$125,000, an amount needed to pay certain obligations of the project. HUD would not approve the proposed selling price of the project units, and the parties to the agreements told us that the limited partnership never was formed.

The agreements provided also that (1) Boise have the right to designate a majority membership in the board of directors of Newtowne, (2) in the event that 80 percent of the condominium units were not sold within 1 year or 100 percent within 18 months, all the outstanding capital stock of Newtowne be transferred to Boise, and (3) to aid in such a transfer, all the outstanding capital stock of Newtowne be assigned to Boise as collateral.

The attorney for Boise advised us that the agreements were security agreements and that under such agreements Maryland law required the disposal of the collateral (in this case the stock) through sale or other means before the transfer of ownership would be legal and binding. Furthermore the fact that Boise had taken physical control of the stock certificates, had designated a majority of the directors of Newtowne, and had assumed responsibility for management of the project did not, in the attorney's opinion, constitute ownership.

Messrs. Lang and Briscuso informed us that they considered Boise the owner of Newtowne because of the provision in the agreements calling for the stock to be transferred to Boise if the project was not sold as condominiums within specified periods. Furthermore they informed us that a time extension to this provision of the agreement had been requested by letter dated February 9, 1971, and that, since Boise had

B-167637

not replied, they had concluded that Boise had assumed ownership of the stock.

IMPROVEMENTS MADE TO DWELLING UNITS

The financial records maintained for Newtowne by a certified public accounting firm during the 2-year period ended May 1971, showed that about \$71,000 had been spent on repairs and maintenance; however, a further breakdown showing what part of this amount had been expended for improving the units was not available. In addition to the \$125,000 initially provided pursuant to the agreement, Boise had provided Newtowne with about \$40,500 to meet the project's operating deficits; however, we could not determine from the accounting records whether any part of the \$40,500 had been used for improvements to the project.

Messrs. Lang and Briscuso informed us that they had not invested funds for making improvements to the project.

HUD APPROVAL OF VARIOUS STAGES OF PROJECT

HUD records showed that approvals of project site preparation and soil stability had been made by officials of HUD's Philadelphia Regional Office and HUD's Baltimore Area Office.

Pursuant to an agreement with Newtowne, the project architect had primary responsibility for inspection of construction. The architect was required to make weekly inspections and to certify monthly that the materials and work met the plans and specifications. The architect's inspection reports required approval by HUD's Baltimore Area Office. In addition, the Baltimore Area Office made periodic inspections of the project during its construction.

A list of HUD officials who approved the various phases of construction and occupancy of the project units and the dates of these approvals is included as the appendix.

- - - -

B-167637

The persons involved in the matters discussed in this report have not been given an opportunity to review and comment on it, and therefore this should be considered in any use made of the report.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours,



Comptroller General
of the United States

The Honorable Parren J. Mitchell
House of Representatives

HUD OFFICIALS WHO APPROVED VARIOUS PHASES OF
CONSTRUCTION AND OCCUPANCY OF PROJECT UNITS

<u>HUD officials</u>	<u>Date of approval</u>	<u>Phase approved</u>
John B. Purinton, Jr. Site Engineer Philadelphia Regional Office (PRO)	Mar. 9, 1965	Final development plans and specifications
	Apr. 28, 1965	Site engineering
Edward Flickinger Zone Site Planning Advisor, PRO	June 17, 1965	Site development plans
Charles Hager Chief Architect Baltimore Area Office (BAO)	Nov. 11, 1965	Final working drawings and specifications
Allen T. Clapp Director, BAO	Unknown	Same as above
Norman Cooper Chief Underwriter, BAO	Nov. 29, 1965	Same as above
I. John Previtera Structural Engineer, PRO	Mar. 19, 1969	Stability of foundation for buildings 1 and 3
F. Porter Keen Architect Analyst, BAO	Various	Weekly project inspec- tion record (section II)
F. Porter Keen Architect Analyst; Charles Hager Chief Architect; Norman Cooper and Thomas Farrell Chief Underwriters; BAO	Various	Monthly project inspec- tion report (sections I and II) (included final inspection reports)
Messrs. Clapp, Cooper, Farrell, Hager, and Keen, BAO	Various	Permission to occupy